

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

THOMAS C. AND PAMELA McINTOSH

PLAINTIFFS

VS.

CIVIL ACTION NO. 1:06-CV-1080-LTS-RHW

**STATE FARM FIRE & CASUALTY
COMPANY; FORENSIC ANALYSIS &
ENGINEERING CORPORATION and
E.A. RENFROE & COMPANY, et al.**

**MIKE MOORE LAW FIRM'S RESPONSE TO DEFENDANT STATE FARM
FIRE AND CASUALTY COMPANY'S SECOND MOTION TO DISQUALIFY
THE BARRETT LAW OFFICE, P.A., NUTT & McALISTER, P.L.L.C., THE
LOVELACE LAW FIRM, P.A., AND THE MIKE MOORE LAW FIRM, LLC**

COMES NOW, the undersigned counsel for Plaintiffs, Thomas C. and Pamela McIntosh, and files this Response to State Farm's Second Motion to Disqualify and states as follows:

I. INTRODUCTION

I have elected to file a separate response due to allegations raised in the Memorandum of Law in Support of the Second Motion to Disqualify which specifically address my actions.

II. MIKE MOORE'S ROLE

My role during the Hurricane Katrina litigation was primarily as a facilitator and negotiator between the parties which included Attorney General Hood, the Scruggs Katrina Group (the SKG), Insurance Commissioner George Dale and State Farm. The cases which were being negotiated involved the proposed class action resolution (the *Woullard* case), the State's civil lawsuit and criminal investigation. As will be discussed below, it was my understanding that the SKG's 640 cases with State Farm had already

been resolved at the time I became involved. The objective and goal was to achieve a global resolution of all the cases which provided a fair resolution for all the parties, and also provided some relief and money for the State Farm policyholders on the coast who were still trying to resolve their claims and rebuild their homes as well as their lives.

III. MIKE MOORE IS NOT A MEMBER OF THE SKG OR KLG

Although I presently represent the McIntoshes, I have never been a member of the Scruggs Katrina Group (SKG) nor am I a member of the Katrina Litigation Group (KLG). Furthermore, I do not have an agreement to receive any compensation nor have I been promised any compensation in return for my involvement in the McIntosh case.

The facts of this case will show that State Farm has repeatedly lied and refused to tell the truth to the McIntoshes concerning the adjustment of their claim. Of all the disputes between policyholders and State Farm that I am familiar with, the McIntoshes' claim by far involves the most egregious conduct by State Farm. It is for this reason that I accepted the offer to be involved in the case and to have offered to do so on a pro bono basis.

Despite the assertions of Deputy Insurance Commissioner Lee Harrell, I have not received nor do I have any agreement to receive any compensation from any source as a result of my involvement as a facilitator concerning the Hurricane Katrina litigation against State Farm or in the McIntosh case. *See* Defendant State Farm's Memorandum of Law in Support of the Second Motion to Disqualify, p. 10.

IV. STATE FARM'S EFFORTS TO HOLD THE CIVIL LITIGATION HOSTAGE
PENDING THE RESOLUTION OF THE CRIMINAL INVESTIGATION

State Farm has repeatedly alleged in this case and other litigation that the SKG and the Attorney General used the threat of criminal prosecution to coerce State Farm to settle civil lawsuits. This allegation is not only false, but it was State Farm who interjected the State's criminal investigation into the negotiations relating to the civil cases. State Farm hired Sheila Birnbaum who specializes in settling complex cases especially class actions. According to Ms. Birnbaum in a meeting I had with her, she was tasked to "resolve all of the Mississippi problems." State Farm's goal, and hers, was to settle the outstanding civil matters that had been filed, negotiate a class action settlement that would resolve claims for all those coast residents who had not filed a lawsuit, and of course resolve any possible criminal allegations. State Firm hired a team of former prosecutors to review the facts concerning the double engineering reports and other possible criminal matters. They of course were concerned about the criminal investigation by the Attorney General's Office. It was State Farm who continually insisted that all or none of the cases would be resolved.

According to State Farm, On November 10, 2006 the SKG had reached a settlement with State Farm concerning approximately 640 policyholders' claims. *See* Sheila Birnbaum's January 25, 2007 letter attached hereto as Exhibit 1. State Farm and the SKG were also jointly pursuing a class action resolution of claims that had not been filed which ultimately was known as the *Woullard* case. It was at this point in November 2006 that State Farm inquired if the State of Mississippi would be interested in resolving their civil lawsuit and criminal investigation using the class action settlement as a vehicle

to provide relief for consumers and achieve what the Attorney General wanted in terms of reforms of their business practices and relief for consumers.

Attorney General Jim Hood asked me to serve as a facilitator in an attempt to reach a resolution of these matters which I did. I first met with Ms. Birnbaum and other representatives of State Farm to flesh out what the issues were on both sides. They then wanted to meet with Attorney General Hood. The first meeting between State Farm's representatives and Attorney General Hood concerning a potential resolution occurred on November 20, 2006. Attending this meeting for State Farm was Jeffrey Jackson, Deputy General Counsel, Ms. Birnbaum, and James Tucker, and Attorney General Jim Hood and myself for the State. Thus, at the time of State Farm's first meeting with Attorney General Hood on November 20 they had settled the SKG's 640 cases ten days before as evidenced by Ms. Birnbaum's January 25, 2007 letter and were already negotiating a proposed class action resolution with the SKG. So it is nonsense that the Attorney General or SKG's lawyers were trying to use the criminal investigation to force State Farm to settle the 640 cases. It should be noted that State Farm was in favor of reaching a proposed class action resolution as such would help them provide finality as to potential litigation by State Farm policyholders and the resolution of claims would spread good will to their policyholders as well as being a very expeditious way to get money to homeowners who needed to rebuild their lives.

In the meeting, State Farm was told by Attorney General Hood very clearly that the negotiation of the civil matters and the criminal investigation would be handled separately. As the negotiations progressed, in numerous meetings Attorney General Hood frequently asked State Farm's representatives to resolve the civil matters without

resolving the State's criminal investigation, or alternatively to resolve the proposed class action resolution without any consideration as to the State's civil lawsuit and criminal investigation. Attorney General Hood made it clear that he believed the civil and criminal should be handled separately and he would proceed only in that manner.

State Farm made the resolution of the criminal investigation a prerequisite to consummating the settlement of civil matters. The criminal investigation was the last matter to be resolved. In fact it appears that State Farm refused to officially settle the SKG's 640 cases, agree to the proposed class action resolution, and settle the State's civil lawsuit until they had also resolved the criminal investigation. This is supported in part by the fact that State Farm did not disperse the first funds pursuant to the SKG settlement until January 25, 2007 which was more two months after they had settled the case, but only two days after the criminal investigation was resolved. *See* Exh.1 Sheila Birnbaum's January 25, 2007 letter and Attorney General Hood's press release dated January 23, 2007 concerning Settlement with State Farm attached hereto as Exhibit 2. In fact, as State Farm knows very well Attorney General Hood negotiated the last terms of the class settlement proposal in a meeting in Memphis, Tennessee with State Farm's General Counsel getting them to increase what they would pay coastal residents who had slabs. Even then State Farm would not finalize the deal until Attorney General Hood would sign a letter agreeing to discontinue his criminal investigation, which was negotiated later.

Therefore, it is disingenuous and false for State Farm to assert that the SKG and the Attorney General's Office used the threat of a criminal prosecution to coerce State Farm to settle the civil matters. It appears to me that State Farm had already settled with

the SKG when negotiations began with the Attorney General concerning the criminal investigation. In addition, negotiations had already started concerning the proposed class action resolution when I was asked to get involved in the class settlement discussions. It was State Farm who brought the Attorney General to the negotiations table and State Farm who insisted that a resolution of the criminal investigation must be reached before consummating the settlement of the civil matters.

In the Defendant's Memorandum of Law they also allege that the "Plaintiffs' lawyers used the threat of criminal litigation to coerce State Farm into making the *Renfroe* lawsuit go away" and in support of such allegation cite two emails I sent to State Farm. See Defendant State Farm's Memorandum of Law in Support of the Second Motion to Disqualify p. 24. The emails dated February 6th and 8th are not evidence of any coercion whatsoever as the criminal investigation was resolved on January 23, but instead relate to my efforts to get the parties to renegotiate the terms of the proposed class action resolution.

Looking at the other events transpiring during that time period demonstrate the purpose of the two emails. On January 23, 2007, the Attorney General announced his settlement with State Farm including the resolution of the criminal investigation. On January 24, 2007, a Motion for Preliminary Class Certification and for Preliminary Approval of Proposed Class Action Settlement was filed in the *Woullard* case. On January 26, 2007, the Court entered an Order denying the proposed class action settlement. This Order surprised all sides as the expectation was that the court would give preliminary approval and then help the parties work through any objections or amendments that the court might require. At the time of the two emails in February,

there were some discussions in Alabama about settling the *Renfroe* lawsuit which was an action attacking the Rigsbys over documents taken from State Farm. I was told that the E.A. Renfroe's attorneys stated the only way they would settle is for the Rigsbys' attorneys to pay millions of dollars.

The financial demand upon the Rigsbys' attorneys to settle the lawsuit upset and angered the SKG as they believed that State Farm had agreed to obtain a dismissal of the *Renfroe* lawsuit as part of the settlement of their 640 cases. See Richard Scruggs' letter to Jeffrey Jackson and Sheila Birnbaum dated February 19, 2007 attached hereto as Exhibit 3. It should be noted in fairness that State Farm strenuously disagrees with the SKG's belief that the *Renfroe* settlement was part of their agreement. See Sheila Birnbaum's letter dated February 21, 2007 attached hereto as Exhibit 4. Attorney General Hood also was not pleased with the continued harassment of the Rigsbys who had been essential witnesses in his criminal investigation.

During this time, as anyone can see there was much discontent, and I was working with all the parties to renegotiate or amend the terms of the proposed class action resolution in hopes that the court would look favorably on the settlement if properly explained and or amended. Some of the lawyers in the SKG group viewed State Farm's failure to obtain a dismissal of the *Renfroe* lawsuit as a lack of good faith on their part and thus they did not want to proceed with renegotiating the terms of the proposed class action resolution or even continue pushing such a settlement at all. Others wanted to continue pursuing the settlement including State Farm. Continuing my efforts to facilitate communications between the parties, my emails were simply an effort to keep the parties calm and prevent a blow up in what had already become a very contentious

and complex renegotiation. In fact, my efforts were somewhat successful as we were at least able to keep the parties talking long enough to present the settlement to Judge Senter on February 28, 2007 although what I had predicted would happen did when the discontent between the State Farm and the SKG grew to the point that the SKG withdrew the request for a class certification on March 12.

V. NO INVOLVEMENT WITH THE GRAND JURY INVESTIGATION

As a former prosecutor – both as Attorney General and District Attorney - with more than twenty five years experience, I am well aware of the restrictions concerning the use of information obtained during a criminal investigation. I am also very familiar with the grand jury investigative process. I did not have any involvement in the grand jury aspect of the State Farm criminal investigation. I was never provided access to any information or documents obtained through the use of grand jury subpoenas nor did I participate in any grand jury presentation. Once again despite the assertions of Deputy Insurance Commissioner Lee Harrell, I was not involved in the grand jury process of the criminal investigation. *See* Defendant State Farm’s Memorandum of Law in Support of the Second Motion to Disqualify, p. 10.

In light of my prosecutorial experience, I offered my advice and assistance to the Attorney General concerning his criminal investigation. I also had discussions with State Farm’s attorneys, specifically James Tucker, Jeff Walker, and Amanda Barbour of Butler Snow, who on behalf of State Farm were attempting to dissuade the Attorney General’s Office from pursuing criminal charges. State Farm’s attorneys voluntarily provided information to me in support of their position that State Farm’s conduct in adjusting the

Hurricane Katrina claims did not justify a criminal prosecution. I delivered and discussed that information with Attorney General Hood.

Consequently, there is nothing improper about the limited role I played regarding the criminal investigation and then subsequently serving as counsel for the McIntoshes beginning six months later. State Farm knows very well what my role was as I was in constant contact with their representatives and had a very cordial working relationship with them. If they had any objection, I am sure Sheila Birnbaum or Jeffrey Jackson would have called me to talk about it as lawyers do in these matters.

State Farm also questions my appearance and involvement in the *Woullard* case after providing assistance and advice to Attorney General Hood concerning his criminal investigation. Yet, all the parties involved encouraged my participation because they determined I knew the terms of the proposed settlement as well as anyone. Specifically, Sheila Birnbaum, Jeffrey Jackson, Attorney General Hood, and the SKG group all wanted me to explain the terms to the Court. After the *Woullard* hearing was over, Sheila Birnbaum contacted me to thank me for my participation in the hearing and to congratulate me on my efforts to explain the terms of the settlement to the Court. Thus, since State Farm encouraged my participation in the *Woullard* case it is curious and perplexing that they now allege it was improper. My guess is that lawyers representing State Farm who were not involved in the negotiation of the settlement are filing these pleadings piecing together e-mails and other matters without the experience and history of those who were involved in the negotiation of this very complex resolution.

VI. NO KNOWLEDGE OF THE NEW ATTORNEY GENERAL INVESTIGATION

According to Defendant State Farm's Memorandum of Law Supporting their Second Motion to Disqualify Attorney General Hood reopened this criminal investigation on August 23, 2007. *See* Defendant State Farm's Memorandum of Law in Support of the Second Motion to Disqualify, p.23. I have no knowledge of those matters whatsoever.

CONCLUSION

I hope that my explanation addresses the allegations raised in Defendant State Farm's Motion and I stand ready to answer any questions the Court has about my role in these cases. Accordingly, the Plaintiffs respectfully request that the Defendant's Second Motion to Disqualify be denied.

Respectfully submitted this the 22nd day of January, 2008.

By: s/ Michael C. Moore
Michael C. Moore (MSB #3452)
MIKE MOORE LAW FIRM
10 Canebrake Blvd., Suite 150
Flowood, MS. 39232
Tel. (601) 933-0070
Fax: (601) 933-0071

CERTIFICATE OF SERVICE

I, **MICHAEL C. MOORE**, one of the attorneys for the Plaintiffs, Thomas C. and Pamela McIntosh, hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following:

Mary E. McAlister, Esquire
Derek A. Wyatt, Esquire
David Neil McCarty, Esquire
NUTT & MCALISTER, PLLC
605 Crescent Blvd., Suite 200
Ridgeland, MS 39157

Don John W. Barrett, Esquire
Marshall H. Smith, Jr., Esquire
David Malcolm McMullan, Jr., Esquire
BARETT LAW OFFICES
Post Office Box 987
Lexington, MS 39095

Dewitt M. Lovelace, Esquire
LOVELACE LAW FIRM, P.A.
36474 Emerald Coast Parkway, Suite 4202
Destin, FL 32541

Zach Butterworth, Esquire
Michael Hesse, Esquire
Gary Yarborough, Jr., Esquire
HESSE & BUTTERWORTH, PLLC
841 Highway 90
Bay St. Louis, MS 39520

John A. Banahan, Esquire
H. Benjamin Mullen, Esquire
BRYAN, NELSON, SCHROEDER, CASTIGLIOLA & BANAHAN
4105 Hospital Road, Suite 102-B
Pascagoula, MS 39567

Dan W. Webb, Esquire
Rochelle R. Morgan, Esquire
WEBB, SANDERS & WILLIAMS, PLLC
363 North Broadway Street
Tupelo, MS 38802-0496

Larry Canada, Esquire
Katherine Breard, Esquire
GALLOWAY, JOHNSON, et al.
701 Poydras Street, Suite 4040
New Orleans, LA 70139

David A. Norris, Esquire
H. Hunter Twiford, III., Esquire
Christine Lipsey, Esquire
MCGLINCHEY, STAFFORD
P. O. Drawer 22949
Jackson, MS 39225

George Shaddock, Esquire
707 Watts Avenue
Pascagoula, MS 39567

Michael R. Smith, Esq.
William W. Taylor, III., Esquire
ZUCKERMAN, SPAEDER

and I hereby certify that I have mailed by United States Postal Service the document to
the following non-ECF participants:

NONE

This, the 22nd day of January, 2008.

s/Michael C. Moore
MICHAEL C. MOORE

MICHAEL C. MOORE (3452)
Mike Moore Law Firm
10 Canebrake Blvd., Suite 150
Flowood, MS. 39232
Tel. (601) 933-0070
Fax: (601) 933-0071